Co-operation with national judges in the field of environmental law under the European Commission Framework Contract ENV.A.I./FRA/2012/0018

Training module

HOW TO HANDLE COURT PROCEEDINGS INVOKING NON-COMPLIANCE WITH EU WASTE LAW

30 November - 02 December 2016
Thessaloniki, Greece

Organised by Academy of European Law
The slide shows the topic of the training module and speaks for itself.
The foreword sets the scene by mentioning the core of continuous legal training which is the exchange of thoughts and experiences.
It is important for the audience to have a good insight in the structure of the upcoming presentation.
Role of the National Judge

This slide is a title.
Rodin's *The Thinker* is meant as an eye catcher setting the path for self-reflection. The crucial point is to achieve the self-perception of the national judge as an EU judge. Therefore, the phenomenon should be thoroughly explained.
The corner stone of the EU judicial order can be found in Article 19 TEU.
Article 174 TFEU reflects the overall principle that those EU cases, that are not conferred to the EU courts, have to be decided by the courts of the Member States. As a result access to justice within the European Union is likely to be a combination of a right conferred by the EU law and the enforcement of this right by a national court.
This slide recalls the core features of the preliminary reference enshrined in Article 267 TFEU. Among other things it is important for the national judge to know that he or she can (and should) assess the validity of an EU legal act. However, it is the monopoly of the CJEU to nullify the EU legal act.
The current EU law system is far from being perfect. An audience of judges has experienced that in one or another way. Every practitioner knows (at least) one story where things went terribly wrong. Those stories - as sad as they may be - are an important help to start interesting discussions and to detect flaws in the system. So the idea is to look not only at the bright side of the matter.
The “Toolbox of the National Judge” shows the main legal devices within the EU law system in order to deal with inconsistencies (“dark side”). The trias of “supremacy”, “consistent interpretation” and last but not least “preliminary reference” is presented in a very simple manner. This is necessary to be able to keep those three in mind when handling future cases.
This slide is a title.

EU Waste Law in its Policies
Before entering into legal details the overall aim to create a resource efficient Europe should be recalled.

**Europe 2020 Strategy:**

Commission communication COM(2010) 2020 final of 3 March 2010:

Flagship initiative “Resource Efficient Europe”

“Support the shift towards a resource efficient and low carbon economy, decoupling economic growth from resource and energy use.”
Every practitioner should be familiar with the main features of the circular economy and its benefits.
The waste hierarchy has its place in the centre of the EU waste law and should be highlighted.
Judicial Control

This slide is a title.
Practical experience shows that cases on waste law raise this question.
The problem of end-of-life vehicles is probably known to audience and therefore a good starting point for discussing the key notions of waste law.
It should be made clear that the courts have the ultimate say when it comes to decide the question whether something is waste or not.
There is no room for a margin of appreciation by the public authority. Here the helpful role of guidelines as a “source of inspiration” may be mentioned. Experience shows that judges focus very much on legal texts and overlook other information for a better understanding of the matter.
The Judge and the Waste (III)

Our judge Hamlet cannot stop contemplating, but now about the course of time ...

To classify a substance as „waste or non-waste“ in a convincing way necessitates - among other more specific tests - a very good look at the given history and the probable future of the object.

Used vehicle or waste vehicle (=„ELV“ end-of life vehicle)?

Slide 21 draws the intention to the importance of a case by case analysis.
Waste under the WFD

A title.
In the course of the seminar the definition of waste has already been presented. However, due to its importance it is repeated here.
CJEU defining waste (I):
„holder’s actions“ and „discard“

“The classification of a substance or object as waste is to be inferred primarily from the holder’s actions and the meaning of the term ‘discard’.”

C-188/07, Commune de Mesquer, para. 53.
C-263/05, Commission v Italy, para. 32.

The key words “holder’s action” and “to discard” should be highlighted.
The CJEU has made clear that it is not accepted to interpret the legal concept of waste in a restrictive manner.
This slide is meant to initiate a legal discussion. Is the jurisprudence established by two famous oil spill cases still valid? The wording of the WFD excludes “unexcavated contaminated soil”.
It is typical of waste that it is a burden for the holder.
The case gets easy when there is a legal requirement to dispose of an object like an old refrigerator.
Commercial value does not - per se - exclude the concept of waste. This is especially important when it comes to the assessing of so called by products.
Applying the WFD
The legal nature of the WFD as a directive has to be explained.
Applying the WFD (II)

Judge:
„That does not answer my question:
Is it really necessary to read and apply the WFD
in the national court room?“

Only in a “Brave New Legal World” there would be no need to apply a transposed Directive!

However, in the real world things are different:
For some reason or other MS can get lost in the transposition process ...
Transposition delayed might mean rights of EU citizens denied ...
Any “precise” provision can become highly unclear if confronted with a specific case no one ever thought of.

The eternal problem of texts, their meaning and their lacunae ...

This slide is meant to raise the awareness of the problem that national law does not properly reflect the content of the WFD.
Statistics of transposition can only reflect a part of the problem.
The slide gives an overview of a possible direct application of the WFD and points out the importance of consistent interpretation.
The slide proposes to read the WFD in a “synoptical way” with the domestic legislation.
Thank you for your kind attention!

The slide speaks for itself.